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csl

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Modular International, Inc.

Serial No. 75/575,781

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Ansel M. Schwartz, Esquire for applicant.

Cimmerian Coleman, Trademark Examining Attorney, Law Office  
102 (Thomas Shaw, Managing Attorney).

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Before Simms, Bucher and Hohein, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Modular International, Inc. (applicant), a Delaware corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark LINEAIRE for recessed wall and ceiling electric lighting fixtures.<sup>1</sup> The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC § 1052(e)(1), arguing that applicant's mark is merely descriptive of a characteristic or feature of its goods. Applicant and the

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<sup>1</sup> Application Ser. No. 75/575,781, filed November 2, 1998, based upon applicant's bona fide intention to use the mark in commerce.

Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

Relying upon a foreign language dictionary, copies of patents, excerpts from electronic sources and third-party registrations, the Examining Attorney contends that the asserted mark LINEAIRE is the foreign equivalent of the English word "linear," which word describes a type of lighting fixture.<sup>2</sup> The Examining Attorney argues that the foreign equivalent of a merely descriptive English word is also unregistrable. The word "linéaire" is translated into the English word "linear."<sup>3</sup> Some of the evidence on which the Examining Attorney relies to show that lighting fixtures may be described by the word "linear" is set forth below:

FIG.1 is a side elevational view of a linear indirect lighting fixture housing having a ballast mounted in an inverted position to the bottom of the

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<sup>2</sup> During prosecution, the Examining Attorney asked applicant for an English translation of the mark LINEAIRE. Applicant did not respond to this request, and the Examining Attorney did not thereafter repeat this requirement.

<sup>3</sup> Webster's New World French Dictionary Concise Edition (1992), pertinent pages of which were made of record by the Examining Attorney. We take judicial notice of the definition of the word "linear" from Webster's Third New International Dictionary of the English Language Unabridged (1993):

1 a: of or relating to a line: as (1): following a straight course: being or going in a straight direction... b: consisting of or arranged in a line...

housing using a ballast holder in  
accordance with the invention.  
U.S. Patent No. 5,373,416

\* \* \* \* \*

...and recessed fixtures, they offer one  
of the broadest arrays of linear  
lighting on the market today, including  
compact and linear fluorescent...

...New addition to the award-winning  
Slite family of miniaturized  
undercabinet linear lighting fixtures...

...for architectural, showcase, display,  
fluorescent, incandescent, t-2, t-5, t-  
8, low voltage, compact, track,  
recessed, custom and linear lighting  
fixtures...  
(Internet evidence from the Google  
search engine)

\* \* \* \* \*

...better serve its West Coast lighting  
showroom and electrical distributor  
customers, W.A.C. Lighting--a  
specialist in track, recessed, linear  
and rope lighting...

Linear Lighting surface-mounted linear  
wraparound lensed fluorescent fixtures...

Linear lighting RSA Lighting's new  
brochure highlights recessed,  
retail/display, track, architectural  
linear, theatrical/stage, and  
decorative linear lighting...

...in bright colors, which continue up  
the vertical surface at the base of the  
vaulted ceiling. Above the chalkboard,  
a continuous linear luminaire is  
recessed in the soffit for supplemental  
lighting on the board...

Featured product: Architectural electroluminescent lighting is a self-contained linear light source available in links of up to 500'...

...In a two-story atrium accented by escalators, surfacemounted linear light fixtures create visual continuity from the lower level of the store to an upper mezzanine...  
(From lexis.com)

In addition, the following identifications of goods from third-party registrations are of record: "commercial and residential electric linear display lighting fixtures"; "electric lighting fixtures, namely, low voltage linear, low voltage showcase... and landscape lighting fixtures..."; "electrical lighting fixtures and related electrical and electronic parts sold as a unit, namely, low voltage and line voltage lighting fixtures, linear, curvilinear and area lighting fixtures..."; "nonornamental electric canister-type lighting fixtures and nonornamental electric linear-type lighting fixtures"; "electric linear lighting fixtures"; "linear incandescent lamp fixtures"; and "electrical linear modular lighting systems..." The Examining Attorney concludes, therefore, that the word "linear" (or its French equivalent "linéaire") is a merely descriptive term in the lighting industry.

Applicant argues, on the other hand, that its mark does not describe recessed wall and ceiling electric

lighting fixtures because its mark is not recognized as a word in the English language. Also,

[a] review of the references cited by the examining attorney as a basis of rejecting the subject application reveals terms which are modified by "Linear". Thus, "Linear" is an adjective and is not descriptive of any good in and of itself, and consequently, Lineaire cannot be descriptive.

Brief, 2. Applicant also argues, without explanation, that its mark creates ambiguity or incongruity.

It is well settled that the foreign equivalent of a merely descriptive English word is no more registrable than the English word itself. See *In re Oriental Daily News, Inc.*, 230 USPQ 637 (TTAB 1986) (Chinese characters that translate as ORIENTAL DAILY NEWS held merely descriptive of newspapers); *In re Geo. A. Hormel & Co.*, 227 USPQ 813 (TTAB 1985) (SAPORITO, an Italian word meaning "tasty," held merely descriptive because it describes a desirable characteristic of applicant's dry sausage); *In re Optica International*, 196 USPQ 775 (TTAB 1977) (OPTIQUE, a French word meaning "optic," held merely descriptive of eyeglass frames); and TMEP Section 1209.01(b). Here, it is clear from the pertinent page of Webster's New World French Dictionary Concise Edition (1992) that the French word "linéaire" is translated into the English word

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"linear." Further, the record adequately demonstrates that the word "linear" is used to describe a type of lighting fixture. Accordingly, we fully agree with the Examining Attorney that applicant's asserted mark is merely descriptive of its goods.

Decision: The refusal of registration is affirmed.